

## **REMARKS**

The Non-Final Office Action mailed July 21, 2009, has been received and reviewed. Prior to the present communication, claims 16, 19-24 and 26-45 were pending in the subject application. All claims stand rejected. Each of claims 16, 32, 36, 37, 39 has been amended herein, while claims 26-31, 34, and 38 have been cancelled and claims 46-52 have been added. Thus, claims 16, 19-24, 32-33, 35-37, and 39-52 remain pending.

Claims 26-30 stand rejected under 35 U.S.C. § 101, and claims 26, 27-37 and 39-45 stand rejected under 35 U.S.C. § 103(a). Reconsideration of the subject application is respectfully requested in view of the above amendments and the following remarks.

### **Allowed Subject Matter**

Applicants would like to thank the Examiner for stating that claims 16 and 19-24 are in a condition of allowance as indicated in the Non-final Office Action dated 07/21/2009.<sup>1</sup> Applicants respectfully submit that newly added claims 46-52 mirror features of claims 16 and 19-24. Therefore, it is respectfully submitted that claims 46-52 are therefore in a condition of allowance and such favorable action is respectfully requested.

### **Rejections based on 35 U.S.C. § 101**

Claims 26-30 stand rejected under 35 U.S.C. § 101 for being directed toward non-statutory subject matter. However, claims 26-30 have been cancelled herein. Thus, it is respectfully submitted that the rejection of these claims is therefore moot and should be withdrawn. Such favorable action is respectfully requested.

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<sup>1</sup> See Non-final Office Action dated 07/21/2009, p. 13.

## **Rejections based on 35 U.S.C. § 103**

### **A.) Applicable Authority**

Title 35 U.S.C. § 103(a) declares, a patent shall not issue when “the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.” The Supreme Court in Graham v. John Deere counseled that an obviousness determination is made by identifying: the scope and content of the prior art; the level of ordinary skill in the prior art; the differences between the claimed invention and prior art references; and secondary considerations.<sup>2</sup> To support a finding of obviousness, the initial burden is on the Office to apply the framework outlined in Graham and to provide some articulated reason, suggestion, or motivation, found either in the prior art references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the prior art reference or to combine prior art reference teachings to produce the claimed invention.<sup>3</sup> Recently, the Supreme Court elaborated, at pages 13-14 of the *KSR* opinion, that “it will be necessary for [the Office] to look at interrelated teachings of multiple [prior art references]; the effects of demands known to the design community or present in the marketplace; and the background knowledge possessed by [one of] ordinary skill in the art, all in order to determine whether there was an apparent reason to combine the known elements in the fashion claimed by the [patent application].”<sup>4</sup> Accordingly, in order to establish a *prima facie* case of obviousness, the Office shall provide a “clear articulation of the reason(s) why the

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<sup>2</sup> *Graham v. John Deere Co.*, 383 U.S. 1 (1966).

<sup>3</sup> See, *Application of Bergel*, 292 F. 2d 955, 956-957 (1961).

<sup>4</sup> *KSR v. Teleflex*, No. 04-1350, 127 S.Ct. 1727 (2007).

claimed invention would have been obvious" based on factual findings upon applying the *Graham* factual inquiries.<sup>5</sup>

B.) Unpatentable Rejection Over U.S. Publication No. 2002/0149705 to Allen et al. in View of U.S. Publication No. 2003/0041048 to Balasuriya and Further in View of U.S. Patent No. 7,164,936 to Heatley

Claims 26, 27 and 29-31 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Allen et al. (U.S. Publication No. 2002/0149705, hereinafter Allen) in view of Balasuriya (U.S. Publication No. 2003/0041048, hereinafter Balasuriya) further in view of Heatley (U.S. Patent No. 7,164,936, hereinafter Heatley).

Claims 26, 27 and 29-31 are cancelled herein. Therefore, it is respectfully submitted that the rejection of these claims is moot and therefore should be withdrawn. Such favorable action is respectfully requested.

C.) Unpatentable Rejection Over Allen in View U.S. Patent No. 6,359,970 to Burgess Further in View of Heatley

Claims 32-37 and 39-45 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Allen in view of U.S. Patent No. 6,359,970 to Burgess (hereinafter Burgess) further in view of Heatley.

The Office objected to claim 38 as being dependent upon rejected claims (i.e., claims 32 and 34), but the Office stated that claim 38 would be allowable if rewritten in independent form including all of the features of the base claim (i.e., 32) and the intervening claim (i.e., claim 34).<sup>6</sup> As a result, independent claim 32 has been amended herein to recite the

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<sup>5</sup> MPEP § 2143

<sup>6</sup> See Non-final Office Action dated 07/21/2009, p. 13.

features of claims 34 and 38. Therefore, it is respectfully submitted that amended claim 32 is in a condition for allowance and such favorable action is respectfully requested.

Claims 33, 35-37, 39-45 depend directly or indirectly from independent claim 32. As such, Applicant respectfully requests withdrawal of the 35 U.S.C. § 103(a) rejections of these claims as well.

D.) Unpatentable Rejection Over Allen in View Balasuriya Further in View of Heatley and Further in View of Burgess

Claim 28 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over Allen in view of Balasuriva further in view of Heatley and further in view of Burgess.

Claim 28 is cancelled herein. Therefore, it is respectfully submitted that the rejection of this claim is moot and therefore should be withdrawn. Such favorable action is respectfully requested.

**NEW CLAIMS**

Claims 46-52 have been added by way of the present communication. It is respectfully submitted that each of these claims is supported by the as-filed specification, for instance at ¶¶ [0025] – [0026], and that no new matter has been added by way of these claim additions.

As previously discussed, claims 46-52 recite features of claims 16 and 19-24. As the Office previously indicated that claims 16 and 19-24 were allowable, it is respectfully submitted that claim 46-52 are also in a condition of allowance.<sup>7</sup> Therefore, applicants respectfully request such favorable action for these claims as well.

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<sup>7</sup> See Non-final Office Action dated 07/21/2009, p. 13.

**CONCLUSION**

For at least the reasons stated above, each of claims 16, 19-24, 32-33, 35-37, and 39-52 is believed to be in condition for allowance. Applicants respectfully request withdrawal of the pending rejections and allowance of the claims. If any issues remain that would prevent issuance of this application, the Examiner is urged to contact the undersigned—by telephone at 816-474-6550 or via email at cwfisher@shb.com (such communication via email is herein expressly granted)—to resolve the same prior to issuing a subsequent action.

A One Month Extension of Time is submitted herewith. It is believed that no additional fee is due in conjunction with the present communication. However, if this belief is in error, the Commissioner is hereby authorized to charge any amount required to Deposit Account No. 19-2112, referencing attorney docket number MFCP.101281.

Respectfully submitted,

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